FILE COPY

Nos. 179 to 182 inc

JUN 4 19

CHARLES ELMORE C

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1930

---

No.

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

*Petitioners,*

*against*

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

---

## PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

AND

## BRIEF IN SUPPORT THEREOF

---


FREDERICK H. WOOD
ALMUTH C. VANDIVER
BRUCE BROMLEY
CHARLES F. CURLEY
*Attorneys for Petitioners*


---

[NOTE: For Additional Captions See Inside Front Cover.]

No.

FARBWERKE vormals MEISTER LUCIUS & BRUNING,

*Petitioner,*

*against*

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

---

No.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER,

*Petitioner,*

*against*

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

---

No.

BADISCHE-ANILIN & SODA-FABRIK,

*Petitioner,*

*against*

E. I. duPONT deNEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

## SUBJECT INDEX


| | PAGE |
|---|---|
| Petition for Writs of Certiorari | 2 |
| Statement | 2 |
| Reasons for allowance of the writs | 5 |
| Specification of Errors | 8 |
| Prayer for writs | 8 |
| Brief in support of petition | 10 |
| Opinions below | 10 |
| Jurisdiction | 10 |
| The question presented | 10 |
| Statutes | 10 |
| Argument | 11 |
| I. The court below in holding that the accrued royalties were seized rendered a decision in conflict with the decisions of this Court relative to the law governing the assignments of patents and decided an important question of federal law relative to the Trading with the Enemy Act | 11 |
| II. The court below in holding that the German owners were not the owners of the patents within the meaning of Trading with the Enemy Act as originally enacted and in further holding the Amendment of 1928 to be unconstitutional has erroneously determined important questions of federal law which should be finally settled by this Court | 21 |
| Conclusion | 26 |
| Appendix [Trading with the Enemy Act] | i-xi |
| Sec. 7 (c) | i |
| Sec. 10 (c), (d), (e), (f) and (g) | iii |
| Amendment to Sec. 10 (f) by Sec. 19 of Settlement of War Claims Act | vi |
| Sec. 12 | vii |

## TABLE OF CASES

PAGE

*Aetna Insurance Company* v. *Hyde*, 275 U. S. 440 . . . . 24
*Albright* v. *Teas*, 106 U. S. 613 . . . . . 18

*Board of Commissioners of Creek County* v. *Alexander*, 58 Okla. 128 . . . . . 22

*Canda Bros.* v. *Michigan Malleable Iron Company*, 152 Fed. 178 . . . . . 6, 15
*Chemical Foundation* v. *E. I. duPont de Nemours & Co.*, 29 Fed. (2d) 597 (Dist. Ct. Del.) . . . . . 10
Same (C. C. A. 3d Cir.) . . . . . 10
*Cope* v. *Cope*, 137 U. S. 682 . . . . . 7, 22
*Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24 . . . . . 6, 15, 17, 18

*Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282 . . 24
*Dibble* v. *Augur*, 7 Blatch 86 . . . . . 6, 15, 17

*Emerson* v. *Hubbard*, 34 Fed. 327 . . . . . 6, 15

*Hamilton* v. *Kentucky Distilleries Company*, 251 U. S. 146 . . . . . 23, 24
*Heald* v. *District of Columbia*, 259 U. S. 114 . . . . . 24
*Herman* v. *Detroit Shipbuilding Co.*, 295 Fed. 423 . 6, 15
*Hicks* v. *Anchor Packing Company*, 16 Fed. (2d) 723 . . . . . 4, 5, 21, 22
*Highland* v. *Russell Car & Snow Plow Company*, 279 U. S. 253 . . . . . 23

*Johnston* v. *Southern Well Works*, 208 Fed. 145 . . 6, 15
*Jones* v. *Berger*, 58 Fed. 1006 . . . . . 6, 15

PAGE

*Kaolatype Engraving Co.* v. *Hoke*, 30 Fed. 444 .... 6, 15
*Koppel Industrial Car & Equipment Co.* v. *Orenstein & Koppel, etc.*, 289 Fed. 446 ..... 19

*Leadam* v. *Ringgold Co.*, 140 Fed. 611 ..... 6, 15

*May* v. *Juneau*, 30 Fed. 241 ..... 6, 15
*Miller* v. *United States*, 11 Wall. 268 ..... 23
*Missouri Rate Cases*, 230 U. S. 474 ..... 24
*Moore* v. *Marsh*, 7 Wall. 515 ..... 6, 15

*Pratt* v. *Paris Gas Light & Coke Co.*, 168 U. S. 255 18

*Superior Drill Co.* v. *Nye Mfg. Co.*, 98 Fed. 734 .6, 15, 18
*Straus* v. *Foxworth*, 231 U. S. 162 ..... 24
*Sutherland* v. *Guaranty Trust Co. of N. Y.*, 11 Fed. (2d) 696, 698 ..... 16

*United States* v. *Chemical Foundation*, 272 U. S. 1 19
*United States* v. *Loughrey*, 172 U. S. 206 ..... 6, 15
*United States* v. *Morton*, 65 Fed. Rep. 204, 209 .... 22
*United States* v. *Stafoff*, 260 U. S. 477 ..... 7, 22

## TABLE OF STATUTES CITED


| | PAGE |
|---|---|
| Act of Feb. 13, 1925 (28 USCA § 347 (a) ) | 10 |
| Settlement of War Claims Act of 1928, Sec. 19 (45 Stat. 277) | 4, 5, 7, 8, 10, 20, 21, 22, 23, 25 |
| Trading With the Enemy Act (40 Stat. 411) | 2, 13, 20, 21, 22, 24 |
| Sec. 7 (c) | 5, 6, 10, 11 |
| Sec. 10 (c) | 2, 10, 19 |
| Sec. 10 (d) | 10 |
| Sec. 10 (e) | 10 |
| Sec. 10 (f) | 3, 4, 5, 7, 8, 10, 11, 20, 21 |
| Sec. 10 (g) | 10, 19 |
| Sec. 12 | 10 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1930

FARBWERKE vormals MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and BADISCHE-ANILIN & SODA-FABRIK,

*Petitioners,*

*against*

CHEMICAL FOUNDATION, INC.; E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

No.

October Term, 1930

---

FARBWERKE vormals MEISTER LUCIUS & BRUNING,

*Petitioner,*

*against*

E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

No.

October Term, 1930

---

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER,

*Petitioner,*

*against*

E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

No.

October Term, 1930

---

BADISCHE-ANILIN & SODA-FABRIK,

*Petitioner,*

*against*

E. I. duPONT deNEMOURS & Co., and WALTER O. WOODS, as Treasurer of the United States,

*Respondents.*

No.

October Term, 1930

## PETITION FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioners, Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler and Badische-Anilin & Soda-Fabrik respectfully pray for writs of certiorari to the Circuit Court of Appeals for the Third Circuit to review the decrees of that court entered March 4, 1930, affirming decrees of the United States District Court for the District of Delaware. A certified transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38, par. 1, of the Rules of this Court.

### STATEMENT.

At the outbreak of the War petitioners, citizens of Germany, (hereinafter collectively referred to as the German owners) were severally the owners of certain United States letters patent (R. 168-169).

Trading with the Enemy Act,* (Oct. 6, 1917, c. 106; 40 Stat. 411), authorized the granting of licenses for the use of enemy-owned United States letters patent (Sec. 10 (c), 50 USCA App. p. 271) and the payment

*The pertinent provisions of this Act are printed in full in the appendix.

of reasonable royalties for such use, to be fixed as provided in the Act and to be recoverable by the owners of such patents upon the filing of bills in equity after the end of the War and until the expiration of one year thereafter (Sec. 10 (f), 50 USCA App. p. 272). The power to grant such licenses was delegated by the President to the Federal Trade Commission (R. 125-127). Pursuant to such authority, respondent E. I. duPont deNemours & Co. (hereinafter referred to as duPont) was licensed under Federal Trade Commission License No. 19 to use said patents (R. 29-34). The patents were subsequently seized by the Alien Property Custodian (R. 98-105) and thereafter sold and assigned to respondent Chemical Foundation, Inc., on April 10, 1919 (R. 106-110). Neither the instruments of seizure (R. 98-105) nor the assignment (R. 106-110) expressly covered the accrued royalties.

Within a year after the termination of the War, the German owners, severally, brought suits against duPont to recover reasonable royalties pursuant to Section 10 (f) of the Trading with the Enemy Act (R. 38-50). Within the same period Chemical Foundation brought suit against duPont for the recovery of reasonable royalties for the use of the same patents from the date of the assignment of the patents by the Alien Property Custodian to it, namely, April 10, 1919, to the date when the license was cancelled (R. 15-38).

By its bill of complaint Chemical Foundation makes no claim for royalties which had accrued prior to the assignment of the patents to it. The German owners, as correctly stated by the court below (R. 254), ex-

pressly limited the relief sought by them to such royalties as had accrued prior to such assignment. The three suits of the German owners and that of the Chemical Foundation, Inc., were consolidated for trial (R. 53-55).

While these cases were pending, the court below (The Circuit Court of Appeals for the Third Circuit) in *Hicks* v. *Anchor Packing Co.*, 16 F. (2d) 723, held that the right conferred, by the act, upon the owner of patents, or copyrights, to bring suits for royalties accruing under licenses granted in accordance therewith was limited to the persons who were the owners of such patents, or copyrights, at the time of the institution of such suits, and that hence enemy owners could not sue thereunder for royalties which had accrued on such patents prior to their seizure and sale. Thereafter by Section 19 of the Settlement of War Claims Act of 1928 (Act of March 10, 1928, ch. 167, Sec. 19; 45 Stat. 2. ), Section 10 (f) of Trading with the Enemy Act was amended by the addition of the following paragraph:

> "In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred or delivered to the Alien Property Custodian or seized by him, *any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian* of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label or copy-

right was seized or otherwise acquired by the Alien Property Custodian."

The District Court following the decision of the Circuit Court of Appeals in *Hicks* v. *Anchor Packing Co., supra,* held that the German owners were not the owners of the patents within the meaning of Section 10 (f) of Trading with the Enemy Act, as originally enacted, that the amendment thereof by Settlement of War Claims Act was unconstitutional, and dismissed the bills of the German owners (R. 195-196, 198-9, 201-202). In the Chemical Foundation suit, consolidated for trial with the suits of German owners, the decree entered by the District Court declared Chemical Foundation to be the owner of the royalties, which had accrued prior to the seizure and sale of said patents, as well as thereafter (R. 191-194), although, in its bill of complaint, it had asserted no such right and although no issue in respect thereof was joined in said case between the German owners and petitioners.

On appeal the Circuit Court of Appeals affirmed holding (1) that the theretofore accrued royalties as well as the patents themselves were seized by the Alien Property Custodian, (2) That the German owners were not the owners of the patents within the meaning of the Act, as originally enacted and (3) that the amendment of 1928, if applied to these cases, was unconstitutional.

## REASONS FOR ALLOWANCE OF THE WRITS

1. The patents were seized under subsection (c) of Section 7 of Trading with the Enemy Act, as amended

November 4, 1918 (ch. 201, sec. 1; 40 Stat. 1020; 50 USCA App. p. 210-211). This subsection expressly provides that the instrument of seizure should "have the same force and effect as a duly executed conveyance, transfer, or assignment" to the Alien Property Custodian of the patents seized. The instrument of seizure did not in express terms cover the accrued royalties. It is settled federal law that an assignment of a patent and of all right, title and interest in respect thereof does not include accrued royalties, or the right to recover damages and profits for past infringements, unless expressly conveyed. *Moore* v. *Marsh*, 7 Wall. 515, 522; *United States* v. *Loughrey*, 172 U. S. 206, 211, 212; *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24; *Superior Drill Co.* v. *Nye Mfg. Co.*, 98 Fed. 734 (6th C. C. A.); *Canda Bros.* v. *Michigan Malleable Iron Co.*, 152 Fed. 178 (6th C. C. A.); *Johnston* v. *Southern Well Works*, 208 Fed. 145 (5th C. C. A.); *Dibble* v. *Augur*, 7 Blatch 86 (91), Fed. Cas. No. 3,879; *May* v. *Juneau*, 30 Fed. 241; *Kaolatype Engraving Co.* v. *Hoke*, 30 Fed. 444; *Emerson* v. *Hubbard*, 34 Fed. 327; *Jones* v. *Berger*, 58 Fed. 1006; *Leadam* v. *Ringgold Co.*, 140 Fed. 611; *Herman* v. *Detroit Shipbuilding Co.*, 295 Fed. 423, 424.

The decision of the court below that such instruments of seizure, which the statute declared should have the same force and effect as an assignment, covered accrued royalties as well as the patents themselves is in conflict with the decisions of this Court and the Circuit Courts of Appeals of the Fifth and Sixth Circuits, cited above, as well as with settled federal law.

2. In deciding that the accrued royalties, as well as the patents, were seized the court below decided an im-

portant question of federal law which has not been but should be settled by this Court.

3. In deciding that the suits of the German owners could not be maintained under Section 10 (f) of Trading with the Enemy Act, either as originally enacted or as amended by the Settlement of War Claims Act of 1928, the court below decided an important question of federal law which has not been but should be settled by this Court.

4. In holding the amendment of Section 10 (f), by the Settlement of War Claims Act of 1928, unconstitutional as applied to the circumstances presented the court below decided an important question of federal law which has not been but should be settled by this Court.

5. As a part of the Settlement of War Claims Act of 1928 Congress intended to confirm in the former owners of patents the right to recover royalties which had accrued thereunder under the terms of said Act prior to their seizure and, in failing to give effect to such intent, the court below decided a question of national and international importance which has not been and should be settled by this Court.

6. In failing to give effect to the Settlement of War Claims Act of 1928 as a legislative interpretation of Section 10 (f) of the Trading with the Enemy Act as originally enacted, the Court below decided an important question of Federal law in conflict with the rule of decision laid down by this Court in *Cope* v. *Cope*, 137 U. S. 682, 688 and in *United States* v. *Stafoff*, 260 U. S. 477, 480.

## SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred

1. In holding that the accrued royalties were seized.

2. In holding that only such persons who were the owners of patents at the time of the institution of suits, could bring such suits for the recovery of accrued royalties under Trading with the Enemy Act.

3. In holding that the amendment of Section 10 (f) of Trading with the Enemy Act by Section 19 of Settlement of War Claims Act of 1928 was, as applied to the facts of this case, unconstitutional.

4. In affirming the decree of the District Court dismissing the petitioners' several bills and in affirming so much of the decree in the Chemical Foundation suit as found it to be the owner of the accrued royalties.

WHEREFORE, your petitioners respectfully pray that writs of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Judicial Circuit, sitting in Philadelphia, Pennsylvania, commanding said court to certify and send to this Court on a day to be designated a full and complete transcript of the record and of all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the decrees of the Circuit Court of

Appeals be reversed and that the petitioners be granted such other and further relief as may seem proper.

FARBWERKE vormals MEISTER LUCIUS & BRUNING,

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT vorm. ROESSLER, and

BADISCHE-ANILIN & SODA-FABRIK,

by

FREDERICK H. WOOD

ALMUTH C. VANDIVER

BRUCE BROMLEY

CHARLES F. CURLEY

*Attorneys for Petitioners.*

## BRIEF IN SUPPORT OF THE PETITION.

**Opinions below.**

The opinion of the District Court (R. 176-189) is reported in 29 F. (2d) 597. The opinion of the Circuit Court of Appeals (R. 251-263) is reported in .. F. (2d) .....

**Jurisdiction.**

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 USCA §347 (a)). The decrees of the Circuit Court of Appeals for the Third Circuit were entered on March 4, 1930 (R. 264-268).

**The question presented.**

May the German owners of the patents, seized under the Trading with the Enemy Act under instruments of seizure, which did not in express terms seize the royalties accrued under licenses granted under said Act, which patents were subsequently sold, recover such accrued royalties either under said Act, as originally enacted, or under the amendment thereof by the Settlement of War Claims Act, in suits brought within the time specified in said Act?

**Statutes.**

The pertinent sections of the Trading with the Enemy Act are subsection (c) of Section 7 as enacted (40 Stat. 416) and as amended November 4, 1918 (40 Stat. 1020), subsections (c), (d), (e), (f) and (g) of Section 10 as enacted (40 Stat. 420) and as amended by Settlement of War Claims Act of 1928 (45 Stat. 277), Section 12 as enacted and as amended March 28, 1918 (40 Stat. 460), all of which are reproduced in the appendix.

## ARGUMENT.

**I. The court below in holding that the accrued royalties were seized rendered a decision in conflict with the decisions of this Court relative to the law governing the assignments of patents and decided an important question of federal law relative to the Trading with the Enemy Act.**

Subsection (c) of Section 7 as amended November 4, 1918, under which the patents were seized provided

> "If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by or on account of, or on behalf of, or for the benefit of, an enemy or ally or enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.
>
> "Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or

rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded *shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment* to the Alien Property Custodian so filed, registered, or recorded."

Congress thus intended that the seizure should be evidenced by a "requirement" or written instrument, which, in the case of patents, should "have the same force and effect as a duly executed . . . assignment . . ." The President delegated the power conferred to the Alien Property Custodian, by whom the patents were seized. The "requirement" or instrument of seizure in respect of each * covered

---

*The instrument of seizure in respect of Patent No. 868,294, dated and recorded March 26, 1919, was in the following form, the two other instruments being substantially similar:

DEMAND FORM (3)

Trust No. 12079
Report No. 38124

PATENT OWNED BY ENEMY SUBJECT TO THE RIGHTS OF OTHERS.

E. I. Du Pont de Nemours & Company,
Wilmington, Delaware

H. A. Metz Laboratories, Inc.,
New York, N. Y.

To The Commissioner of Patents,
Washington, D. C.

To All to Whom These Presents May Come:

I, FRANCIS P. GARVIN, Alien Property Custodian, duly appointed, qualified and acting under the provisions of the Act of

"said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof."

---

Congress known as the "Trading With the Enemy Act," approved October 6, 1917, and the amendments thereto and the executive orders and proclamations issued in pursuance thereof, under and by virtue of the authority vested in me as Alien Property Custodian, after investigation, do determine that

Farbwerke vorm. Meister, Lucius & Bruning,
Hochst-on-the-Main, Germany

is an enemy not holding a license granted by the President within the purview of said Act as amended and said orders and proclamations; and I do further, after investigation, determine that certain letters patent of the United States, identified as follows:

| *Patent No.* | *Date of Issue* | *Title* |
|---|---|---|
| 868,294 | Oct. 15, 1907 | Process of producing Phenylglycin and its homologues |

and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of

E. I. Du Pont de Nemours & Company
Wilmington, Delaware

belongs to, or is held for, or on account of, or on behalf of, or for the benefit of said enemy,

Farbwerke vorm. Meister, Lucius & Bruning,
Hochst-on-the-Main, Germany

As such Alien Property Custodian I do seize said letters patent and every right, title and interest with respect thereto, including all damages and profits recoverable at law or in equity from any person, firm, corporation or government, for past infringement thereof, subject to the rights of

E. I. Du Pont de Nemours & Company
Wilmington, Delaware

and I hereby require that you convey, transfer, assign and deliver the same to me, to be by me, as Alien Property Custodian, held, administered and accounted for as provided by law.

I, as Alien Property Custodian, do request that the Commissioner of Patents record this requirement upon the books and

It is well settled that the assignment of a patent and of "every right, title and interest with respect thereto" does not operate to transfer to the assignee either accrued royalties or the right to recover past damages or profits

---

records kept by him, to show the assignment and transfer of letters patent, in respect to said letters patent above mentioned.

This demand is supplementary to any and all requirements and demands heretofore made with respect to said property and is in addition to and without prejudice to such requirements and demands, and shall in no way affect the interests, rights and powers acquired by me as Alien Property Custodian by virtue of such previous requirements and demands.

Witness my hand and seal of office this 22nd day of March, 1919.

FRANCIS P. GARVAN
Alien Property Custodian.

Service of the foregoing demand is hereby acknowledged, this 26th day of March, 1919.

R. F. WHITEHEAD
Acting Commissioner of Patents 485.

Recorded March 26, 1919.

2-392

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE

Received and Recorded on the 26th day of March, 1919 in Liber Z 106, page 301 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

JAMES T. NEWTON
*Commissioner of Patents*

Exd

LLW
6-1697

---

The instruments of seizure in respect of the other patents belonging to the other petitioners, dated and recorded February 21, 1919 and March 26, 1919, respectively, were identical in form except that the instrument recorded February 21, 1919 did not include the words "subject to the rights of E. I. Du Pont de Nemours & Company, Wilmington, Delaware".

for infringement, but that the same must be expressly assigned. *Moore* v. *Marsh*, 7 Wall. 515, 522; *United States* v. *Loughrey*, 172 U. S. 206, 211, 212; *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U. S. 24; *Superior Drill Co.* v. *Nye Mfg. Co.*, 98 Fed. 734; *Canda Bros.* v. *Michigan Malleable Iron Co.*, 152 Fed. 178; *Johnston* v. *Southern Well Works*, 208 Fed. 145; *Dibble* v. *Augur*, 7 Blatch. 86 (91), Fed. Cas. No. 3,879; *May* v. *Juneau*, 30 Fed. 241; *Kaolatype Engraving Co.* v. *Hoke*, 30 Fed. 444; *Emerson* v. *Hubbard*, 34 Fed. 327; *Jones* v. *Berger*, 58 Fed. 1006; *Leadam* v. *Ringgold Co.*, 140 Fed. 611; *Herman* v. *Detroit Shipbuilding Co.*, 295 Fed. 423, 424.

Construed according to the law governing the assignment of patents, the accrued royalties were excluded from the instrument of seizure, and the right to recover damages and profits for infringement were included only because specifically mentioned. This the court below recognized (R. 258) but held that such royalties were nevertheless seized because it was said that the court was dealing not with a voluntary assignment but with "an act of capture."

In so holding, it is respectfully submitted that the court misinterpreted both the statute, under which the patents were seized, and the instrument of seizure itself. The section quoted above makes express reference to patents, which are specifically included in the classes of property which the President is authorized to seize. The second paragraph expressly provides that the instrument of seizure, referred to therein as a "requirement," shall in the case of patents "have the same force and effect as a duly executed * * * assignment" thereof. Congress

thus clearly intended that the force and effect of such instrument should be determined by the law governing the assignment of patents. In holding that it should be otherwise construed, the court below disregarded the plain intent of Congress. Under the Act the Alien Property Custodian undoubtedly had authority to seize the royalties as well as the patents. The Act did not, however, require the Alien Property Custodian to seize all of the property of an enemy owner but authorized the custodian to qualify or limit the seizure in such manner and to such extent as he might in any case see fit. *Sutherland* v. *Guaranty Trust Company of New York*, 11 F. (2d) 696, 698 (2d C. C. A.). The extent of the seizure, must be determined by the words of the instrument of seizure construed in the light of the law governing assignments of patents. Otherwise, the instrument of seizure does not have the same force and effect as an assignment, but a force and effect different therefrom.

Moreover, the express inclusion of damages and profits for past infringement, which under the law governing the interpretation of assignments would not otherwise have been included, and the exclusion of any reference to the accrued royalties is strongly, if not conclusively indicative of an intent to exclude the latter. If, as asserted by the court below, the words "every right, title and interest with respect thereto" were effective to seize the accrued royalties, they were equally effective to seize the right to recover damages and profits for past infringement and no specific mention thereof was required. The instrument of seizure was evidently carefully drawn by a draughtsman familiar with the law governing the assignment of patents, and in conformity

therewith. If it had been intended to cover the accrued royalties as well as such damages and profits, specific mention of both would have been made. It is not, of course, for the court to speculate why the one was included and the other excluded.

Aside from its reference to the act as one of capture, the only reason assigned by the court below for its decision is that "the words 'every right, title and interest with respect to' the patents" on their face would include royalties which are said to be "a very real 'interest' in or in respect to a patent." But the same observation might have been made in respect of the cases cited above, construing assignments.

In *Crown Die & Tool Co.* v. *Nye Tool & Machine Works, supra,* the decision of Judge Blatchford in *Dibble* v. *Augur, supra,* is cited with approval in support of this rule, the opinion also commenting on the fact that Judge Blatchford "subsequently became a justice of this Court and had great experience in the administration of the patent law." The Dibble case may, therefore, be regarded as one of the leading cases on the subject. In that case, Judge Blatchford said:

> "* * * In conveying all of Robertson's 'right, title, interest, claim or demand whatsoever, in, to or under' the patent, it conveys only the right to claims for infringements which should be committed after such assignment. (*Moore* v. *Marsh,* 7 Wallace, 515.) The words 'claim or demand whatsoever, in, to or under' the patent, are not sufficient to cover claims for past infringements * * *" (pp. 90-91).

That the right to recover for past damages or for royalties does not inhere in the patent itself likewise appears from the opinion of the late Chief Justice in *Superior Drill Co.* v. *Nye Mfg. Co., supra,* in which it is said:

> "* * *. Claims for damages for past trespasses (in respect of a patent) do not pass by any conveyance of the thing trespassed upon. They are mere choses in action, independent of the thing injured, which pass to the administratrix as such, and which must be specifically assigned if they are to pass with the patent."

Accrued royalties are even more independent of the patent, itself. A suit for the recovery of royalties is not a suit arising under the patent laws over which the Federal courts have exclusive jurisdiction, but one for the enforcement of contract rights in which the sole jurisdiction is in the state courts, except where Federal jurisdiction may be invoked on the ground of diverse citizenship. *Crown Company* v. *Nye Tool Works, supra, Albright* v. *Teas,* 106 U. S. 613; *Pratt* v. *Paris Gas Light & Coke Co.,* 168 U. S. 255. It is true, that the power to exact royalties in the first instance grows out of the patent, but the royalties themselves do not arise thereunder but out of the license under which they accrue. In this case no voluntary agreement was entered into between the German owners and the licensee because of the existing state of war. The Government under its war power, however, had the undoubted power to grant such licenses, which when granted had the same force and effect as a contract between the German owners and the

licensee. *Koppel Industrial Car & Equipment Co.* v. *Orenstein & Koppel et al.*, 289 Fed. 446, 451 (2nd C. C. A.)

The District Court was apparently of the opinion (R. 183) that, although the statute in terms provided for the granting of licenses and the payment of royalties, the licensee was in reality an infringer, and that hence the royalties were in fact damages for infringement, the right to recover which was seized. The Circuit Court of Appeals did not adopt this view, which is clearly erroneous. The statute itself expressly and carefully distinguishes between licensees and infringers. Section 10 (*c*) expressly grants to licensees under the statute immunity from suits for infringement while section 10 (*g*) as expressly authorizes the institution of suits by enemy owners against infringers. A person may not at the same time be a licensee and an infringer. In the exercise of the war powers Congress had full power to seize and dispose of enemy property. *United States* v. *Chemical Foundation*, 272 U. S. 1. This being so, it obviously had the power to authorize the granting of licenses without seizing the patent itself, and to confer upon the licensees the immunities from infringement which attach under a license. The greater power obviously includes the lesser. Congress, by carefully chosen phraseology, sought to create the status of the licensor and licensee of enemy owned patents, in order to provide for the lawful use of such patents in the prosecution of the War. Neither may it be doubted that Congress possessed this power.

Since the royalties accruing prior to seizure were never seized, they could not have been sold to the Chemical

Foundation. Nor were they included within the subsequent assignment of the patents to it by the Alien Property Custodian, the language of which is substantially similar to that contained in the instrument of seizure and was likewise in express terms confined to the interest "acquired" by the Alien Property Custodian (R. 106-110).

That Congress did not intend that the seizure of a patent and every right in respect thereof should, without more, operate to seize royalties accrued prior to the seizure, is further evidenced by the amendment of 1928, confirming the right of former enemy owners of seized patents to recover "royalties for the period prior to the sale" of such patents by the Alien Property Custodian. This amendment was passed as part of a comprehensive settlement of the claims growing out of the War as embodied in the Settlement of War Claims Act. If Congress had originally intended that the mere seizure of the patent (without more) should operate as a seizure of the royalties, the amendment of 1928 would be consistent only with a purpose to divest the purchasers of such royalties from the Alien Property Custodian of the rights acquired by such purchase. On the other hand, by construing the original act in accordance with its natural import, whereby the instrument of seizure is to be interpreted by the law governing the interpretation of the assignments of patents, only those royalties specifically seized passed out of the ownership of the former enemy owner of the patent, and the Amendment of 1928 is rendered in all respects consistent with the act in its original form.

**II. The court below in holding that the German owners were not the owners of the patents within the meaning of Trading with the Enemy Act as originally enacted and in further holding the amendment of 1928 to be unconstitutional has erroneously determined important questions of federal law which should be finally settled by this Court.**

The owner of the patent upon whom the right to recover royalties was conferred by the Act, as originally enacted, concededly meant the enemy owner. In *Hicks* v. *Anchor Packing Co.* the court below held that the subsequent amendment, permitting seizure, limited such right of recovery to the owner of the patent at the time of the institution of the suit and applied the same rule in the instant case. In this the court below erred. The amendment in question did not in express terms take away from former enemy owners the right concededly conferred by the original act to recover the royalties accruing during his period of ownership. Its effect should not be extended beyond that necessary to give full force and effect to the seizure itself. The law governing patents and patent rights recognizes the right of successive owners to recover royalties or damages accruing during their respective periods of ownership and makes such rights dependent not upon ownership of the patent at the time of suit but ownership of the patent at the time of infringement or accrual of the royalties (cases *supra*). The more rational interpretation of the statute in question and the only one consistent with the patent law is that the right to sue for royalties at any time within a year after the end of the

war was a right to be successively exercised by successive owners of the patent at the time that the royalties accrued.

In determining the meaning of the word "owner" as used in the act consideration should also be given to the amendment thereof by the Settlement of War Claims Act. This amendment was presumably prompted by the decision of the court below in the *Hicks* case. That case did not reach this Court and was not conclusive. It had the effect, however, of casting doubt upon the meaning of the Act of Congress in question. The amendment therefore may be assumed to have been intended as a legislative declaration of the purpose of the statute as it then stood. This legislative interpretation while not binding upon this Court is entitled to great weight. *Cope* v. *Cope*, 137 U. S. 682; *U. S.* v. *Stafoff*, 260 U. S. 477; *U. S.* v. *Morton*, 65 Fed. 204; *Board of Commissioners* v. *Alexander*, 58 Okla. 128. It was enacted as a part of the Settlement of War Claims Act, having for its purpose a comprehensive settlement of the various claims of the several governments and their nationals against each other. As a part of such settlement it undertook to make plain the rights of enemy owners to recover royalties, which had accrued prior to seizure of their patents, provided suits therefor had been instituted within a year after the termination of the war in accordance with the provisions of the Trading with the Enemy Act as originally enacted. This intent should not be lightly disregarded. It is believed that the interpretation placed by the court below, upon the original act, as amended by the provision permitting seizure, is plainly erroneous. It is certainly not one required by the language employed. But, if the

matter be involved in doubt that doubt should be resolved in favor of the subsequent interpretation placed upon the act by Congress itself.

Proceeding upon the premise that under the original Act, as subsequently amended by the provisions governing seizure, enemy owners were not the owners within the meaning of such statute, the court below held that the amendment of 1928, as applied to the facts and circumstances of this case, was unconstitutional. This conclusion, resting upon a false premise, must fall. Assuming, however, the correctness of the premise, the conclusion does not follow. The Settlement of War Claims Act was as much an exercise of the war power as were the statutes passed during the war itself. It had for its purpose the settlement of claims growing out of the war. In *Miller* v. *United States,* 11 Wall. 268, 304, this Court declared that the war powers of the government were not affected by the restrictions of the Fifth and Sixth Amendments. This broad statement has since been qualified, *Hamilton* v. *Kentucky Distilleries Company,* 251 U. S. 146, 156, but it may not be doubted that an act, which would be void under the Fifth Amendment, if not referable to the war power, may be sustained, if referable thereto, *Highland* v. *Russell Car & Snow Plow Co.,* 279 U. S. 253. That case involved the constitutionality of the Lever Act as a price fixing statute. Except as an exercise of the war power, such an act of Congress would have clearly violated the Fifth Amendment. Its validity however, as an exercise of the war power was sustained. The rule appears to be that the Fifth Amendment imposes no greater limitation upon the war power than does

the Fourteenth Amendment upon the police power of the states, *Hamilton* v. *Kentucky Distilleries Co., supra.* The usual test of the application of the Fourteenth Amendment to the police power is whether the Act in question is arbitrary, or capricious, or involves an unwarranted and unreasonable interference with private rights, having no direct relation to the objects and purposes for which the police power may be exercised. The amendment of 1928 is subject to none of these infirmities. The effect of the decision of the court below is to permit the licensee under licenses granted under Trading with the Enemy Act to escape the payment of any royalties for the use of the patents in question prior to their seizure. By the acceptance of the license it became obligated to pay such royalties. Assuming that the effect of the amendments providing for seizure was to deprive enemy owners of the right theretofore accorded to sue for such royalties, the amendment of 1928 confirming such rights in them, where suits had already been brought in accordance with the statute, is neither arbitrary, nor capricious, nor does it constitute an unreasonable and unwarranted interference with private property, or private rights.

In so far as the constitutional objection raised rests upon an assumed invasion of the property rights of the Chemical Foundation as assignee of the patents, the objection urged is not open to duPont the licensee. *Missouri Rate Cases,* 230 U. S. 474, 508; *Aetna Insurance Company* v. *Hyde,* 275 U. S. 440; *Dahnke-Walker Co.* v. *Bondurant,* 257 U. S. 282; *Heald* v. *District of Columbia,* 259 U. S. 114; *Straus* v. *Foxworth,* 231 U. S. 162. Nor were any rights of the Chemical Founda-

tion involved. The royalties were never seized and were never sold to it. Were it otherwise, the Chemical Foundation in its suit asserted no rights to the accrued royalties. Its bill of complaint sought only a recovery of the royalties accruing after the sale to it.

Moreover; it is by no means plain that in the exercise of its war power, and as a part of the settlement made of claims growing out of the war, it would have been beyond the constitutional power of Congress to restore to enemy owners the right to royalties, which had accrued under licenses granted *in invitum* by the United States, whatever obligations the United States might be required to assume towards its former assignee of such royalties. It is unnecessary, however, to consider this question further. For the reasons hereinbefore stated, only by a most strained construction of the original Act and of the instruments of seizure may the amendment of 1928 be interpreted as having had this effect.

It may not be doubted that under the Settlement of War Claims Act Congress intended that these and other enemy owners similarly situated should recover royalties accrued under licenses granted under the Trading with the Enemy Act. The grounds upon which this right are contested are believed to be highly technical. In any event, it is respectfully submitted that the questions involved are of such national and international importance as to warrant the assumption of jurisdiction by this Court.

## CONCLUSION.

It is respectfully submitted that in view of the importance of the question involved and the apparent conflict between the decision of the court below with decisions of this Court in analagous cases, the writs of certiorari should be granted.

Respectfully submitted,

FREDERICK H. WOOD
ALMUTH C. VANDIVER
BRUCE BROMLEY
CHARLES F. CURLEY
*Attorneys for Petitioners.*

# APPENDIX

Sections 7, subsection (c), 10, subsections (c), (d), (e), (f) and (g), and 12, as enacted and amended,

of

Trading with the Enemy Act

(Act of Oct. 6, 1917, ch. 106, 40 Stat. 411, 50 USCA Append. pp. 189-311)

---

Section 7, subsection (c) as enacted:

"If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Section 7, subsection (c), as amended Nov. 4, 1918 (ch. 201, § 1, 40 Stat. 1020):

"If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation

shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

"Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

"Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custo-

dian or otherwise, as the Alien Property Custodian shall require.

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

Section 10, subsections (c), (d), (e), (f) and (g), as enacted:

"(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United

States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

"(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

"(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of

any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

"(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for the recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter; *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required,

then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

"If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

"(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided,* That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts."

Section 19 of Settlement of War Claims Act of 1928 (Act of March 10, 1928, ch. 167, sec. 19; 45 Stat. 254) which added to Section 10(f), supra, the following paragraph:

"In the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred, or

delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale of the Alien Property Custodian of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright was seized or otherwise acquired by the Alien Property Custodian."

Section 12 as enacted:

"That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

"All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depositary or depositaries, located and doing business in the United States. The

alien property custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

"The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

"'The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any acts or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee,

or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

"Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee."

Section 12, fourth paragraph, as amended March 28, 1918 (ch. 28, § 1, 40 Stat. 460):

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided,* That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further,* That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be

the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."